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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

BECKER, DREW E

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 07/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/835,078

Applicant(s)

COLE ET AL.

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Request for Continued Examination

1. The request filed on May 16, 2003 for an RCE based on parent Application No. 09/835,078 is acceptable and an RCE has been established. An action on the RCE follows.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,517,882 in view of Rhoads et al.

Rhoads et al teach a baking oven with two pairs of wall structures (Figures 1-2, #39, 43, 78). It would have been obvious to one of ordinary skill in the art to include a second pair of walls since this was commonly done in ovens as shown by Rhoads et al (Figures 1-2, #39, 43, 78) and since applicant already disclosed a "cooking chamber defined at

Art Unit: 1761

least in part by a first pair of oppositely disposed first and second wall structures" in independent claims 1, 9, 13, and 18.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-8, and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoads et al [Pat. No. 3,861,378] in view of Van Elten et al [Pat. No. 4,108,056].

Rhoads et al teach a baking device and method comprising an oven (column 5, line 49) with a baking chamber (Figure 1, 15), first and second wall structures with openings (Figure 1, 39 & 41), a rotating valve assembly which can switch the direction of the airflow (Figure 3, #65, 67, 69, 71, 73; column 3, line 19 to column 4, line 8), a heat source (Figure 1, 63), and a food rack with support members (Figure 2, 47). Rhoads et al also teach a method of baking by rotating the valve motor continuously at one r.p.m. which causes the valve flaps to oscillate in a back and forth fashion (column 3, lines 44-49), passing heated air from the heat source through the rotating valve and spaced apart openings and into the cooking chamber, then rotating the valve assembly to pass heated air from the heat source to the valve assembly and through the second wall and into the baking chamber, then returning the air (Figure 2; column 3, line 19 to column 4,

Art Unit: 1761

line 8). Rhoads et al do not teach a generally cylindrical rotating valve having fluid openings revolvable around a longitudinal axis. Van Elten et al teach a food treating device and method comprising a reversible air circulation system with a generally cylindrical rotating valve having fluid openings revolvable around a longitudinal axis (Figure 8, #194). It would have been obvious to one of ordinary skill in the art to incorporate the valve structure of Van Elten et al into the invention of Rhoads et al since both are directed to air circulation systems for food processing, since Rhoads et al already included a reversible valve (Figure 3, #65, 67, 69, 71, 73), and since the cylindrical valve of Van Elten et al was simpler and did not require the complicated array of flaps utilized by Rhoads et al, thus reducing cost and easing assembly.

6. Claims 2 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoads et al, in view of Van Elten et al, as applied above, and further in view of Konig [Pat. No. 4,779,604].

Rhoads et al and Van Elten et al teach the above mentioned components. Rhoads et al and Van Elten et al do not teach a burner. Konig teaches a baking device comprising a burner (Figure 1, 17). It would have been obvious to one of ordinary skill in the art to incorporate the burner of Konig into the invention of Rhoads et al, in view of Van Elten et al, since all are directed to air recirculation systems, since Rhoads et al already included a heat source (Figure 2, 63), and since burners were commonly used as heat sources in baking devices, as shown by Konig.

Art Unit: 1761

7. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoads et al, in view of Van Elten et al, as applied above, and further in view of Guibert [Pat. No. 4,455,478].

Rhoads et al and Van Elten et al teach the above mentioned components. Van Elten et al also teaches the cylindrical valve having opposed side openings (Figure 8, #194).

Rhoads et al and Van Elten et al do not teach the valve having open ends. Guibert teaches a food heating device comprising a cylindrical, rotating valve with open ends and side mounted openings (Figure 3, #16). It would have been obvious to one of ordinary skill in the art to incorporate the open ends of Guibert into the invention of Rhoads et al, in view of Van Elten et al, since all are directed to air recirculation systems, since Rhoads et al already included a reversible valve assembly with a bottom opening (Figure 2, below #61), since Van Elten et al already included a cylindrical rotating valve with side openings (Figure 8, #194), and since the open ends of Guibert helped to create an air curtain around the cooking chamber which thermally isolated the chamber from the outside atmosphere without the need for a cumbersome door (column 4, line 66 to column 5, line 6).

8. Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhoads et al, in view of Van Elten et al and Guibert, as applied above, and further in view of Konig.

Rhoads et al, Van Elten et al, and Guibert teach the above mentioned components.

Rhoads et al, Van Elten et al, and Guibert do not teach a burner. Konig teaches a baking device comprising a burner (Figure 1, 17). It would have been obvious to one of

Art Unit: 1761

ordinary skill in the art to incorporate the burner of Konig into the invention of Rhoads et al, in view of Van Elten et al and Guibert, since all are directed to air recirculation systems, since Rhoads et al already included a heat source (Figure 2, 63), and since burners were commonly used as heat sources in baking devices, as shown by Konig.

Response to Arguments

9. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.



Drew E Becker
Examiner
Art Unit 1761

July 23, 2003